

oral argument.

2. The WTB has filed an opposition to Schoenbohm's request to supplement his exceptions. In its opposition, the WTB argues, inter alia, that Schoenbohm still could have been lying at the hearing, because maybe his appeal was not pending at the time of the hearing. To squelch these further speculations and unfounded assertions, Schoenbohm hereby respectfully requests leave to submit the attached certified copy of the original Notice of Appeal, filed April 28, 1995, in the District Court and announcing the filing of the appeal in the Third Circuit. Since the hearing took place in August of 1995, the filing of this certified copy should leave no doubt as to the truthfulness of Schoenbohm's hearing testimony concerning the pendency of an appeal.

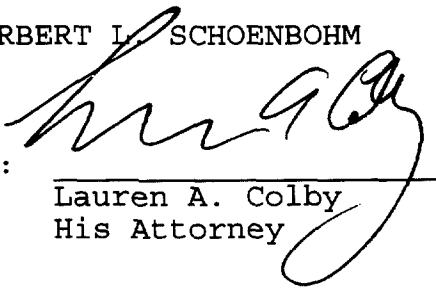
Respectfully submitted,

HERBERT L. SCHOENBOHM

April 25, 1996

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

By:


Lauren A. Colby
His Attorney

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA

Plaintiffs,

Criminal No 91-108

v.

HERBERT L. SCHOENBOHM

Defendant.

NOTICE OF APPEAL

COMES NOW the Defendant Herb Schoenbohm, pro se, and hereby appeals the order of this Court dated April 19, 1995, based upon the rulings of the court on motions in this case, giving rise to said order which appeal was taken to the Third Circuit Court of Appeals from the order of the District Court.

DATE: April 28, 1995



Herbert L. Schoenbohm
P.O. Box 4419
Kingshill, VI 00851
(809) 772-4546

CERTIFIED A TRUE COPY THIS

DAY OF March 6, 1996

ORINN F. ARNOLD
CLERK OF THE COURT

BY Ariana M. Muncie
DEPUTY

RECEIVED
95 APR 28 PM 3:41
CLERK
ST. CROIX

USA v Schoenbohm
United States' Opposition to Acquittal
Page 5

Count I of the indictment charges Defendant with possession of one or more counterfeit (as opposed to unauthorized) access device. A counterfeit access device is an "access device that is counterfeit, fictitious, altered, forged, or an identifiable component of an access device". 18 USC 1029(e)(2). In this case, the illegal codes used by Defendant were: fictitious, in that they were false and invalid; forged, in that they were false imitations of valid codes obtained with intent to defraud; and identifiable components of valid codes, in that their last four digits matched the last four digits of valid customer codes. See United States v. Brewer, 835 F.2d 550, 553 (5th Cir. 1987) (holding that long distance telephone access codes are both counterfeit and unauthorized access devices). The proof at trial established that Defendant used counterfeit access codes. The government did not charge and need not prove unauthorized possession or use with respect to Count I. Thus Defendant's argument applies only to Counts 2 and 3. ✓

Contrary to Defendant's implication, he was not charged with unauthorized possession or use of access devices. He was charged with possession and use of "unauthorized access devices". See Indictment, Counts 2 and 3. This distinction carries legal significance. Section 1029(a)(2) and (3) penalizes the mere possession or use of an "unauthorized access device", if that possession or use is accompanied with the intent to defraud. By virtue of the statute then, no one is "authorized" to possess or


USA v Schoenbohm
United States' Opposition to Acquittal
Page 13

C O N C L U S I O N

The foregoing establishes that there was ample evidence from which the jury could find Defendant guilty beyond a reasonable doubt. It is thus respectfully requested that Defendant's motion for acquittal be denied.

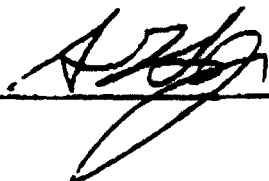
DATE: June 29, 1992

TERRY M. HALPERN,
United States Attorney


ALPHONSO G. ANDREWS, JR.
Assistant U.S. Attorney

C E R T I F I C A T E O F S E R V I C E

I HEREBY CERTIFY that a true copy of the foregoing United States' Opposition to Acquittal was served on the defendant by placing same in the District Court Box for Julio Brady, counsel for the defendant, on this 29th day of June, 1992.



CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 25th day of April, 1996:

ALJ Edward Luton
F.C.C.
2000 L Street, N.W.
Room 225
Washington, D.C. 20554

Thomas D. Fitz-Gibbon, Atty.
F.C.C.
2025 M Street, N.W.
Room 5328
Washington, D.C. 20554

Traci Maust
Traci Maust